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8 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

9 RODNEY E. AKINS

10 Plaintiff,

11 v.

12 SAN DIEGO COMMUNITY COLLEGE )

13 DISTRICT, et al., )

14 Defendants. )

) Case No.: 12cv576 BTM (WVG)

)

) **ORDER GRANTING DEFENDANTS'**  
) **MOTION TO DISMISS**

)

)

15 Plaintiff filed his first complaint in this case on March 7, 2012. Since that time,  
16 two motions to dismiss have been filed and granted in part and Plaintiff has filed  
17 three amended complaints. Defendants have now filed their third motion to dismiss.  
18 (Doc. 48). For the reasons discussed below, Defendant's motion is granted. However,  
19 Plaintiff is granted limited leave to amend his § 1983 claim within thirty (30) days.  
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1           **I. Background**

2           Plaintiff Rodney E. Akins has sued Defendants Penny Hedgecoth and Matthew  
3 Torres in their individual capacities as, respectively, a Mail Room Supervisor and a  
4 Campus Security Officer at San Diego Community College (“College”). (Plaintiff’s  
5 Third Amended Complaint (“TAC”) ¶ 2). Plaintiff, a fifty seven year old African-  
6 American male, alleges that while he was a student at San Diego Community College  
7 in 2004 he suffered pervasive discrimination on account of his race and age from both  
8 students and employees of the College. (TAC ¶ 5). Based on these incidents, Plaintiff  
9 filed multiple complaints in state and federal court beginning in 2005 and continuing  
10 through 2011. (TAC ¶¶ 7-9).

11           On May 25, 2010, Plaintiff and an unnamed companion arrived at the San  
12 Diego Community College Mesa College Campus to mail copies of complaints filed  
13 in state court to the named defendant employees of the College. (TAC ¶ 11). Plaintiff  
14 alleges that, upon arriving at the campus, he and his companion were approached by  
15 “four young white men” who “told the plaintiff’s companion to leave the campus and  
16 one of them actually whispered something in his ear and [his companion]  
17 immediately left the campus.” (TAC ¶ 12).

18           Plaintiff proceeded alone to the campus mail room and, upon inquiring about  
19 obtaining a receipt, he was directed to the part of the mail room “designated for  
20 faculty and ‘District’ employees.” (TAC ¶ 13). Plaintiff was subsequently directed to

1 Defendant Hedgecoth, who Plaintiff described as having a “surly demeanor,” and “a  
2 very disturbing look,” and she refused Plaintiff’s request for a receipt. (TAC ¶¶ 14-  
3 15). According to Plaintiff, Hedgecoth explained that “the last day of school was on  
4 the 21st and all the faculty [had] left for the summer,” and that “school would not  
5 [begin] until June 8th and [there was] no guarantee that the faculty would even be  
6 back to pick up the mail.” (TAC ¶ 15-16). Plaintiff interpreted these comments to  
7 mean that “it was no use mailing the envelopes to them.” (TAC ¶ 15). Plaintiff  
8 replied “[i]t’s no big deal if they come back or not, if the mail is not picked up just  
9 forward the mail to the District Office.” (TAC ¶ 16).

10 Plaintiff then began writing “Forward to district if not picked up” on each of  
11 his envelopes. (TAC ¶ 16). At this point, Defendant Hedgecoth’s facial expression  
12 became visibly upset. (TAC ¶ 16). Plaintiff began placing the envelopes in the  
13 mailroom “in basket” and Hedgecoth “lost her temper” and, “using a very demeaning  
14 tone of voice stated ‘[t]his side is for Faculty and Employees only and all the Mail  
15 boxes were closed.’” (TAC ¶ 17). Then, “using a very sarcastic and condescending  
16 tone and with evil and malicious contempt stated ‘You should look up the personal  
17 addresses of all the teachers and mail the envelopes to their homes.’” (TAC ¶ 18).  
18 When Plaintiff explained that the school would not give out the personal addresses of  
19 faculty or employees, “Hedgecoth smiled and said ‘That’s Right.’” (TAC ¶ 18).  
20 Believing that Hedgecoth was engaged in a conspiracy with other students at the

1 school to deny service of process, Plaintiff asked for Defendant's name. (TAC ¶ 19).  
2 She refused to provide her name and asked for Plaintiff's name. (TAC ¶ 19). Plaintiff  
3 refused to provide his name and asked for Defendant's again, stating that he intended  
4 to report her to her superiors. (TAC ¶ 19). Hedgecoth then told another person in the  
5 mailroom to call campus police. (TAC ¶ 20). Plaintiff finished placing his envelopes  
6 in the student drop box and left the mail room. (TAC ¶¶ 20-21). Hedgecoth followed  
7 Plaintiff "in a fit of rage" screaming "I am in charge of that area also and I am going  
8 to throw the envelopes in the trash." (TAC ¶ 21). Plaintiff did not believe  
9 Hedgecoth's threat and thought that she was merely trying to force him to return and  
10 reclaim the envelopes. (TAC ¶ 21).

11 Approximately five minutes later, Plaintiff was approached by a campus  
12 security officer, Defendant Matthew Torres. (TAC ¶ 22). Defendant Torres asked  
13 Plaintiff to stop and talk, but Plaintiff declined. (TAC ¶ 22). Defendant Torres then  
14 told Plaintiff that he must stop and sit down on a nearby bench or he would place  
15 Plaintiff in handcuffs. (TAC ¶ 23). Again, Plaintiff declined, offering to take back the  
16 envelopes and leave campus. (TAC ¶ 23). Plaintiff walked toward the mailroom and  
17 Defendant Torres called for help. (TAC ¶ 24). Another officer responded and the two  
18 officers ran towards Plaintiff and grabbed his arms, twisting them behind his back  
19 and placing his wrists together, while telling Plaintiff not to resist. (TAC ¶ 24). This  
20 caused Plaintiff extreme pain and he "kept screaming back to them while trying to

1 push [his] arms back toward them that and I quote ‘I’m Cool,’ I’m cool, ‘I am not  
2 resisting.’” (TAC ¶ 24).

3 Plaintiff was subsequently handcuffed, placed on a bench, and questioned.  
4 (TAC ¶ 25). The other officer went to the mail room and returned about twenty  
5 minutes later with Plaintiff’s envelopes and removed the handcuffs. (TAC ¶ 26).  
6 According to Plaintiff, “the officer agreed with me that the call was a bogus call,” but  
7 nonetheless instructed Plaintiff to stay off campus for seven days. (TAC ¶ 27).

8 Plaintiff contends that Defendants unlawfully denied him access to a public  
9 accommodation -- the mail room -- and unlawfully detained him, and that Defendant  
10 Hedgecoth’s conduct was motivated by racial animus. (TAC ¶¶ 28-29). As a result of  
11 Defendants’ conduct, Plaintiff suffered increased blood pressure, dizziness, numbness  
12 in his wrists and fingers, back pain, emotional damages, and permanent injuries,  
13 including a torn ligament and damage to his rotor cuff. (TAC ¶¶ 28-31).

14 Plaintiff’s complaint asserts claims for (1) intentional infliction of emotional  
15 distress, (2) denial of a public accommodation in violation of 42 U.S.C. 1983; (3) age  
16 discrimination; (4) denial of a public accommodation, (5) abuse of process; (6) denial  
17 of due process and equal protection in violation of the California Constitution, Article  
18 1, § 7; (7) conspiracy, (8) unlawful detainment in violation of the California  
19 Constitution, Article 1, § 13; (9) negligence; (10) violation of California Civil Code §  
20 52.1, (11) retaliation, (12) and personal injury. (TAC ¶¶ 32-61a).

1 Plaintiff seeks general, compensatory, and punitive damages in the amount of  
2 five million dollars, equitable relief, and compensation for the cost of suit. (TAC  
3 p. 35).

## 4 **II. Legal Standard**

5 Fed. R. Civ. P. 12(b)(6) provides a defense against complaints which “fail[] to  
6 state a claim upon which relief can be granted.” In other words, “[a] Rule  
7 12(b)(6) motion tests the legal sufficiency of a claim.” Navarro v. Block, 250 F.3d  
8 729, 732 (9th Cir. 2001). As the Supreme Court has explained, a valid complaint

9 must contain a short and plain statement of the claim  
10 showing that the pleader is entitled to relief. . . . [T]he  
11 pleading standard Rule 8 announces does not require  
12 detailed factual allegations, but it demands more than an  
13 unadorned, the-defendant-unlawfully-harmed-me  
accusation. A pleading that offers labels and conclusions or  
a formulaic recitation of the elements of a cause of action  
will not do. Nor does a complaint suffice if it tenders naked  
assertion[s] devoid of further factual enhancement.

14 To survive a motion to dismiss, a complaint must contain  
15 sufficient factual matter, accepted as true, to state a claim to  
16 relief that is plausible on its face. A claim has facial  
17 plausibility when the plaintiff pleads factual content that  
18 allows the court to draw the reasonable inference that the  
19 defendant is liable for the misconduct alleged. The  
20 plausibility standard is not akin to a probability  
requirement, but it asks for more than a sheer possibility  
that a defendant has acted unlawfully. Where a complaint  
pleads facts that are merely consistent with a defendant's  
liability, it stops short of the line between possibility and  
plausibility of entitlement to relief.

1 Ashcroft v. Iqbal, 556 U.S. 662, 677-78 (2009) (internal quotation marks and  
2 citations omitted); see also Petzschke v. Century Aluminum Co., 729 F.3d 1104,  
3 1107 (9th Cir. 2013) (“Iqbal and Twombly moved us away from a system of pure  
4 notice pleading. In addition to providing fair notice, the complaint's allegations must  
5 now suggest that the claim has at least a plausible chance of success.” (internal  
6 citation omitted)).

7 When reviewing a motion to dismiss, the allegations of material fact in  
8 plaintiff's complaint are taken as true and construed in the light most favorable to the  
9 plaintiff. Parks Sch. of Bus., Inc. v. Symington, 51 F.3d 1480, 1484 (9th Cir. 1995).  
10 Moreover, allegations made in a pro se complaint are held “to less stringent standards  
11 than formal pleadings drafted by lawyers.” Haines v. Kerner, 404 U.S. 519, 520  
12 (1971). However, “the tenet that a court must accept as true all of the allegations  
13 contained in a complaint is inapplicable to legal conclusions.” Iqbal, 556 U.S. at 678.

### 14 **III. Analysis**

15 Defendants advance three arguments in their motion to dismiss. First,  
16 Plaintiff's age discrimination claim is barred by his failure to provide timely notice  
17 and exhaust administrative remedies. Second, Plaintiff's state claims are time-barred  
18 by the Government Claims Act. Third, Plaintiff's civil rights claims fail to state a  
19 cause of action because the factual allegations are insufficient. The Court will address  
20 each of these arguments below.

### **1. Plaintiff's Age Discrimination Claims**

Plaintiff's third claim for relief is framed as a cause of action for age discrimination. (TAC ¶¶ 39-40a). While Plaintiff does not refer to a particular statute, it is possible that he is seeking relief for age discrimination in a federally assisted program pursuant to 42 U.S.C. § 6104.<sup>1</sup> However, to bring such a claim, Plaintiff must first exhaust any administrative remedies. 42 U.S.C. § 6104(e)(2). The exhaustion requirement is satisfied "upon the expatriation of 180 days from the filing of an administrative complaint during which time the Federal department or agency makes no finding with regard to the complaint, or upon the day that the Federal department or agency issues a finding in favor of the recipient of financial assistance, whichever occurs first." 42 U.S.C. § 6104(f).

Defendants contend that Plaintiff has failed to allege compliance with § 6104's exhaustion requirements. In response, Plaintiff contends that he filed a complaint against the College for retaliation, age discrimination, denial of accommodation, and other discriminatory acts with the California Department of Fair Employment & Housing ("DFEH") and that he received a notice of case closure and the right-to-sue. (Doc. 54, Ex. A). The notice is dated March 9, 2011, and provides that a civil action must filed within one year of that date. (Doc. 54, Ex. A).

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<sup>1</sup> It is also possible that Plaintiff intends to assert an age discrimination claim under 29 U.S.C. § 623. However, that section's provisions are limited to age discrimination by employers, employment agencies, and labor organizations, and it is thus inapplicable on these facts.



1           The Court finds that Plaintiff has failed to clearly establish compliance with §  
2 6104's exhaustion requirement. First, it does not appear that Plaintiff filed an  
3 administrative complaint with a federal department or agency, as required by 42  
4 U.S.C. § 6104(f). Rather, he appears to have filed a complaint with the California  
5 Department of Fair Employment and Housing. (Doc. 54, Ex. A).

6           Second, Plaintiff has not exhausted his administrative remedies within the  
7 meaning of the statute, which requires that 180 days pass after the filing of the  
8 complaint with the agency without the agency making a finding, or that the agency  
9 issue a finding in favor the recipient of financial assistance. 42 U.S.C. § 6104(f). In  
10 this case, neither prerequisite occurred. Plaintiff notes that he filed a complaint with  
11 the California DFEH on March 9, 2011. (Doc. 54). The notice of case closure, dated  
12 March 9, 2011, states that Plaintiff's complaint was closed because an immediate  
13 right-to-sue notice was requested and that no further action would be taken by DFEH.  
14 Thus, neither 180 days passed without a decision, nor did the agency decide in favor  
15 of the College. The agency simply closed the case at Plaintiff's request. On these  
16 facts, Plaintiff cannot be said to have exhausted his administrative remedies.

17           Moreover, even if Plaintiff did exhaust his administrative remedies, he has not  
18 complied 42 U.S.C. § 6104's notice requirements. Prior to filing suit in district court,  
19 the plaintiff must provide "notice by registered mail not less than 30 days prior to the  
20 commencement of that action to the Secretary of Health and Human Services, the

1 Attorney General of the United States, and the person against whom the action is  
2 directed.” 42 U.S.C. § 6104(e)(1). The notice must “state the nature of the alleged  
3 violation, the relief to be requested, the court in which the action will be brought, and  
4 whether or not attorney's fees are being demanded in the event that the plaintiff  
5 prevails.” 42 U.S.C. § 6104(e)(2).

6 Plaintiff has not alleged compliance with the notice requirement in his filings,  
7 nor has he responded to Defendant’s argument in their briefs that he failed to provide  
8 notice. Accordingly, Plaintiff has failed to demonstrate compliance with § 6104. To  
9 the extent his age discrimination claim is brought under that section, it must  
10 dismissed. It is also possible that Plaintiff means to bring his claim for age  
11 discrimination under California law. However, even if this is the case, Plaintiff’s  
12 claim would nonetheless fail for the reasons discussed in the next section.

## 13 **2. Plaintiff’s State Claims**

14 With the exception of Plaintiff’s claims brought pursuant to 42 U.S.C. §§ 1983  
15 and 6104, each of Plaintiff’s other claims appear to be state claims. Pursuant to  
16 California law, “no suit for money or damages may be brought against a public entity  
17 on a cause of action for which a claim is required to be presented . . . until a written  
18 claim therefor has been presented to the public entity and has been acted upon by the  
19 board, or has been deemed to have been rejected by the board.” Cal. Gov. Code §  
20 945.4. A written notice of claim is required for “all claims for money or damages

1 against local public entities.” Cal. Gov. Code § 905. See also Cal. Gov. Code § 900.4  
2 (“‘Local public entity’ includes a county, city, district, public authority, public  
3 agency, and any other political subdivision or public corporation in the State, but  
4 does not include the State.”). If a public entity rejects the claim, the Plaintiff must  
5 commence any suit “not later than six months after the date such notice is personally  
6 delivered or deposited in the mail.” Cal. Gov. Code § 945.6(a)(1). Finally, it bears  
7 noting that if an action would be barred against a public entity for failure to file suit  
8 within six months, the action is also barred against the public employees of that  
9 entity. Cal. Gov. Code § 950.2.

10 Defendants contend that Plaintiff failed to file his suit within six months of the  
11 College rejecting his claim on September 13, 2010. Rather, Plaintiff filed his original  
12 complaint over a year later on March 7, 2012. Plaintiff replies that he filed his  
13 administrative complaint with the California DFEH on March 9, 2011, within six  
14 months of the College’s rejection of his claim, and also filed a related action in  
15 California Superior Court on March 14, 2011.<sup>2</sup> Plaintiff appears to be arguing that the  
16 instant complaint should relate back to his earlier timely filings before the California  
17 DFEH and Superior Court because the claims all arise out of the same set of facts.

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18  
19 <sup>2</sup> California’s six-month deadline has been interpreted to allow the plaintiff six  
20 months or 182 calendar days, whichever is longer. Gonzales v. County of Los Angeles, 199 Cal.App.3d 601, 605-06 (1988). In this case, March 14, 2011 falls just within the 182 day deadline.

1 Defendants are correct. Plaintiff's original complaint was filed in this court on  
2 March 7, 2012, (Doc. 1) almost a year and a half after his claim was rejected by the  
3 College on September 13, 2010 (Doc. 48-2, Ex. B). However, equitable tolling is  
4 applicable to the California Tort Claims Act six-month deadline and is triggered by  
5 an administrative complaint or a complaint filed in federal court. Daviton v.  
6 Columbia/HCA Healthcare Corp., 241 F.3d 1131, 1136-37 (9th Cir. 2001) (citing  
7 Elkins v. Derby, 12 Cal.3d 410 (1974); Addison v. State of California, 21 Cal.3d 313  
8 (1978)). The principles underlying the doctrine of equitable tolling would seem to be  
9 equally applicable when, as in this case, the first claim is filed in state court and the  
10 second claim is filed in federal court. See id. ("[I]f the defendant is not prejudiced  
11 thereby, the running of the limitations period is tolled [w]hen an injured person has  
12 several legal remedies and, reasonably and in good faith, pursues one." (internal  
13 quotation marks and citation omitted)). That said, the Court need not reach this issue  
14 because even if the six-month deadline is equitably tolled for the duration of  
15 Plaintiff's administrative and state court proceedings, Plaintiff's federal filing is still  
16 untimely.

17 Plaintiff's administrative proceedings began and ended on March 9, 2011, the  
18 date the California DFEH received and closed Plaintiff's complaint and issued a  
19  
20

1 right-to-sue notice.<sup>3</sup> Accordingly, the tolling effect began and ended on the same date  
2 and did not extend the six-month deadline.

3 Plaintiff's state court filing is equally unavailing. Plaintiff filed his case in  
4 California Superior Court on March 14, 2011 -- the last possible date within the six-  
5 month deadline.<sup>4</sup> The case was dismissed without prejudice at Plaintiff's request on  
6 September 14, 2011.<sup>5</sup> Even if equitable tolling applied for the duration of the state  
7 court suit, it ended when Plaintiff's case was dismissed. At that point, the six-month  
8 deadline resumed where it had been tolled: the final day of the six-month deadline.  
9 Accordingly, Plaintiff had to file his federal case on the same date his state court case  
10 was dismissed: September 14, 2011. But Plaintiff did not file the instant federal case  
11 until March 7, 2012. Plaintiff's state claims are nearly six months out of time and  
12 must be dismissed.

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13 <sup>3</sup> Plaintiff contends that the right-to-sue notice stated that Plaintiff had one year to  
14 bring suit, and thus he could file by March 9, 2012. However, Plaintiff provides no  
15 authority for the proposition that the deadline provided on the right-to-sue notice  
16 replaces the Government Claims Act statute of limitations. Rather, each deadline runs  
17 in parallel. The six-month deadline imposed by Cal. Gov. Code § 945.6(a)(1) passed  
18 before the one-year deadline imposed by the DFEH's right-to-sue notice.

19 <sup>4</sup> Plaintiff provides this date in his response and sur-reply to Defendant's motion to  
20 dismiss. The Court also takes judicial notice of the California Superior Court Register  
of Actions for Plaintiff's state case (*Akins v. San Diego Community College District*,  
37-2011-00087553), which confirms this date is accurate. The Register of Actions is  
attached to this order.

<sup>5</sup> While the parties have not provided this date or supporting documentation, the  
Court takes judicial notice of the Request for Dismissal filed in Plaintiff's state case.  
The request is attached to this order.

1                   **3. Plaintiff's Federal Civil Rights Claims**

2                   42 U.S.C. § 1983 provides in relevant part that

3                   Every person who, under color of any statute, ordinance,  
4                   regulation, custom, or usage, of any State or Territory or the  
5                   District of Columbia, subjects, or causes to be subjected, any  
6                   citizen of the United States or other person within the  
7                   jurisdiction thereof to the deprivation of any rights,  
8                   privileges, or immunities secured by the Constitution and  
9                   laws, shall be liable to the party injured in an action at law,  
10                  suit in equity, or other proper proceeding for redress

11                  Defendants argue that Plaintiff's civil rights claims brought under 42 U.S.C. §  
12                  1983 for denial of a public accommodation are so devoid of factual support as to  
13                  warrant dismissal for failure to state a claim under Rule 12(b)(6).

14                  Plaintiff's second cause of action states in relevant part:

15                  Denial of Public Accommodation

16                  Violation of 42 U.S.C. § 1983

17                  . . . . The plaintiff Rodney E. Akins an African American  
18                  Male over 50 years old, a member of a federally protected  
19                  group for age and race . . . .

20                  Defendant Penny Hedgecoth as an individual and acting  
under the color of the state as a Mail Room supervisor  
intentionally and maliciously denied plaintiff the use of a  
Public Accommodation (mail room) assisted by  
[Defendants] Torres and Doe 3 in retaliation for plaintiff  
filing grievances and discrimination law suits against the  
district and district employees. Hedgecoth did not allow the  
plaintiff to deposit envelopes containing summons and  
complaints (service of process) "which is a federally  
protected activity" for district employees in the student mail

1 box which is a public accommodation and prescribed area  
 2 that was being used by others in doing so interfered and  
 3 denied service of process. Also denied plaintiff his basic  
 4 civil rights along with his state and federal constitutional  
 5 rights.

6 (TAC ¶¶ 36-37).

7 Plaintiff does not clearly articulate which “rights, privileges, or immunities  
 8 secured by the Constitution and laws” were violated by Defendants’ conduct.  
 9 However, taking Plaintiff’s factual assertions as true and reading them in a charitable  
 10 light, Plaintiff appears to allege that he was denied access to the College mail room  
 11 on the basis of age, race, and in retaliation for filing prior suits against the College  
 12 and its employees.

13 To withstand dismissal, Plaintiff’s claims must be more than possible, they  
 14 must be plausible. Iqbal, 556 U.S. at 678. “[T]he pleading standard Rule 8 announces  
 15 does not require ‘detailed factual allegations,’ but it demands more than an  
 16 unadorned, the defendant-unlawfully-harmed-me accusation.” Id.<sup>6</sup>

17 Assuming that Defendant Hedgecoth did indeed have a “surly demeanor,”  
 18 “very disturbing look,” was visibly upset and “lost her temper,” and used a  
 19 demeaning, sarcastic, and condescending tone when she refused to provide Plaintiff

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20 <sup>6</sup> Plaintiff cites to the more liberal standard set out in Conley v. Gibson, 355 U.S. 41, 45-46 (1957), which provided that “a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” However, this standard was abrogated by the Supreme Court in Bell Atlantic v. Twombly, 550 U.S. 544, 560-63 (2006). See also Iqbal, 556 U.S. at 670, 677-80.

1 with a receipt for his letters and told Plaintiff that all mail boxes were closed, and that  
2 she called campus security to have Plaintiff arrested, none of these facts show that  
3 Defendant Hedgecoth was motivated by racial animus or age discrimination, or that  
4 she was retaliating against Plaintiff for filing previous complaints. Plaintiff's belief  
5 that "Hedgecoth was a Racist and would not have treated a younger white student the  
6 way she treated plaintiff" (TAC ¶ 28) and that she was acting "in retaliation for  
7 plaintiff filing grievances and discrimination law suits" may or may not be true, but  
8 Plaintiff has not pled sufficient facts to make his belief plausible. Rather, it is exactly  
9 the sort of conclusory allegation that we are bound to reject as insufficient to state a  
10 claim. Id. ("Threadbare recitals of the elements of a cause of action, supported by  
11 mere conclusory statements, do not suffice."). Accordingly, Plaintiff's claim for  
12 violation of his rights under 42 U.S.C. § 1983 must be dismissed.

13       However, the Court will grant Plaintiff leave to file a fourth amended  
14 complaint limited to his § 1983 claim. To withstand a subsequent motion to dismiss,  
15 Plaintiff must plead specific facts showing that it is plausible that he suffered  
16 discrimination on the basis of age, race, or in retaliation for filing previous law suits.  
17 In other words, Plaintiff must offer more than his personal belief that he suffered  
18 discrimination for these reasons. Plaintiff's other state and federal claims are  
19 dismissed with prejudice.

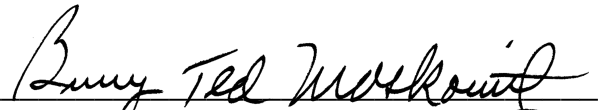


1                   **IV. Conclusion**

2                   Defendant's motion to dismiss is GRANTED. Plaintiff's federal age  
3 discrimination claim is dismissed for failure to comply with exhaustion and notice  
4 requirements. Plaintiff's state claims are dismissed for failure to comply with the  
5 statute of limitations. Plaintiff's federal civil rights claim is dismissed for failure to  
6 allege sufficient facts to state a cognizable claim. Plaintiff is granted leave to file a  
7 fourth amended complaint within thirty (30) days limited to his federal civil rights  
8 claim brought pursuant to 42 U.S.C. § 1983. The Clerk shall enter partial judgment  
9 dismissing all of Plaintiff's other state and federal causes of action.

10  
11 IT IS SO ORDERED.

12 Dated: May 29, 2014

13                     
14                   \_\_\_\_\_  
15                   BARRY TED MOSKOWITZ, Chief Judge  
16                   United States District Court  
17  
18  
19  
20

**SUPERIOR COURT OF CALIFORNIA**  
**County of SAN DIEGO**
**Register of Actions Notice**

Case Number:	37-2011-00087553-CU-CR-CTL	Filing Date:	03/14/2011
Case Title:	Rodney E Akins vs. SAN DIEGO COMMUNITY COLLEGE DISTRICT	Case Age:	191 days
Case Status:	Dismissed	Location:	Central
Case Category:	Civil - Unlimited	Judicial Officer:	Joel M. Pressman
Case Type:	Civil Rights	Department:	C-66

**Future Events**

Date	Time	Department	Event
No future events			

**Participants**

Name	Role	Representation
Akins, Rodney E	Plaintiff	
CHARLES, VICTOR	Defendant	
HEDGEOTH, PENNY	Defendant	
OWEN, KAREN	Defendant	
SAN DIEGO COMMUNITY COLLEGE DISTRICT	Defendant	

**Representation**

Name	Address	Phone Number
No representation		

ROA#	Entry Date	Short/Long Entry	Filed By
1	03/14/2011	Complaint filed by Akins, Rodney E. Refers to: SAN DIEGO COMMUNITY COLLEGE DISTRICT; CHARLES, VICTOR; OWEN, KAREN; HEDGEOTH, PENNY	Akins, Rodney E (Plaintiff)
2	03/14/2011	Civil Case Cover Sheet filed by Akins, Rodney E. Refers to: SAN DIEGO COMMUNITY COLLEGE DISTRICT; CHARLES, VICTOR; OWEN, KAREN; HEDGEOTH, PENNY	Akins, Rodney E (Plaintiff)
3	03/14/2011	Original Summons filed by Akins, Rodney E. Refers to: SAN DIEGO COMMUNITY COLLEGE DISTRICT; CHARLES, VICTOR; OWEN, KAREN; HEDGEOTH, PENNY	Akins, Rodney E (Plaintiff)
4	03/14/2011	Summons issued.	
5	03/14/2011	Case assigned to Judicial Officer Pressman, Joel.	
6	03/14/2011	Request to Waive Court Fees filed by Akins, Rodney E.	Akins, Rodney E (Plaintiff)
7	03/14/2011	Order on Court Fee Waiver filed by Akins, Rodney E.	Akins, Rodney E (Plaintiff)
8	05/11/2011	Certificate of Service filed by Akins, Rodney E.	Akins, Rodney E (Plaintiff)
9	07/14/2011	OSC - Failure to Request Entry of Default scheduled for 09/16/2011 at 01:30:00 PM at Central in C-66 Joel M. Pressman.	
10	08/08/2011	Request for Entry of Default Received for Processing	
11	08/08/2011	Request for Entry of Default filed by Akins, Rodney E. Refers to: SAN DIEGO COMMUNITY COLLEGE DISTRICT	Akins, Rodney E (Plaintiff)
12	08/08/2011	The default was denied as to SAN DIEGO COMMUNITY COLLEGE DISTRICT on Complaint filed by Akins, Rodney E .	
13	09/12/2011	The OSC - Failure to Request Entry of Default was rescheduled to 10/07/2011 at 01:30:00 PM in C-66 before Joel M. Pressman at Central.	

- 14 09/12/2011 OSC - Failure to Request Entry of Default scheduled for 10/07/2011 at 01:30:00 PM at Central in C-66 Joel M. Pressman.
- 15 09/14/2011 Request for Dismissal without Prejudice - Entire Action filed Akins, Rodney E (Plaintiff) by Akins, Rodney E.  
Refers to: CHARLES, VICTOR; HEDGECOTH, PENNY; OWEN, KAREN; SAN DIEGO COMMUNITY COLLEGE DISTRICT
- 21 09/21/2011 OSC - Failure to Request Entry of Default scheduled for 10/07/2011 at 01:30:00 PM at Central in C-66 Joel M. Pressman was vacated.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Rodney E. Akins 580 So. 500 W. # 413 Salt Lake City, Utah 84101  TELEPHONE NO.: 801-746-6973 FAX NO. (Optional): E-MAIL ADDRESS (Optional): rekins2000@hotmail.com ATTORNEY FOR (Name): Pro Per Plaintiff	FOR COURT USE ONLY FILED CIVIL BUSINESS OFFICE 11 CENTRAL DIVISION SEP 14 '11 PM 12:56 2011 SEP 14 1:47  SUPERIOR COURT SAN DIEGO COUNTY, CA
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 Broadway MAILING ADDRESS: Department 66 CITY AND ZIP CODE: San Diego California 92101 BRANCH NAME: Central	
PLAINTIFF/PETITIONER: Rodney E. Akins DEFENDANT/RESPONDENT: <u>San Diego Community College District</u>	
<b>REQUEST FOR DISMISSAL</b> <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): Civil	CASE NUMBER: <u>266</u> 37-2011-00087553-CU-CR-CTL  37-2011-00087553-CU-CR-CTL
- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -	

1. TO THE CLERK: Please **dismiss** this action as follows:

- a. (1) ☐ With prejudice (2) ☒ Without prejudice
- b. (1) ☒ Complaint (2) ☐ Petition
- (3) ☐ Cross-complaint filed by (name):
- (4) ☐ Cross-complaint filed by (name):
- (5) ☒ Entire action of all parties and all causes of action
- (6) ☐ Other (specify):\*

on (date):

on (date):

2. (Complete in all cases except family law cases.)

- ☒ Court fees and costs were waived for a party in this case. (This information may be obtained from the clerk. If this box is checked, the declaration on the back of this form must be completed).

Date: 8-31-2011  
Rodney E. Akins

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☒ PARTY WITHOUT ATTORNEY)

\*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

[Signature]  
 (SIGNATURE)

Attorney or party without attorney for:

- ☒ Plaintiff/Petitioner ☐ Defendant/Respondent  
☐ Cross-Complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.\*\*

Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☒ PARTY WITHOUT ATTORNEY)

\*\* If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

Attorney or party without attorney for:

- ☒ Plaintiff/Petitioner ☐ Defendant/Respondent  
☐ Cross-Complainant

(To be completed by clerk)

4. ☒ Dismissal entered as requested on (date): SEP 14 2011
5. ☐ Dismissal entered on (date): as to only (name):
6. ☐ Dismissal **not** entered as requested for the following reasons (specify):

7. a. ☒ Attorney or party without attorney notified on (date): SEP 21 2011
- b. ☐ Attorney or party without attorney not notified. Filing party failed to provide  
☐ a copy to be conformed ☐ means to return conformed copy

Date: SEP 21 2011

Clerk, by

[Signature]  
 K. ROBERTS  
 Deputy

CIV-110

PLAINTIFF/PETITIONER: Rodney E. Akins  
 DEFENDANT/RESPONDENT:

CASE NUMBER: 26.6.  
 37-2011-0008755/3-CU-CR-CTL

### Declaration Concerning Waived Court Fees

The court has a statutory lien for waived fees and costs on any recovery of \$10,000 or more in value by settlement, compromise, arbitration award, mediation settlement, or other recovery. The court's lien will be paid before the court will dismiss the case.

SEP 14 '11 PM 12:58

1. The court waived fees and costs in this action for (name): Rodney E. Akins
2. The person in item 1 (check one):
  - a. ☒ is not recovering anything of value by this action.
  - b. ☐ is recovering less than \$10,000 in value by this action.
  - c. ☐ is recovering \$10,000 or more in value by this action. (If item 2c is checked, item 3 must be completed.)
3. ☐ All court fees and costs that were waived in this action have been paid to the court (check one): ☐ Yes ☒ No

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

8-31-2011

Rodney E. AKINS

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☒ PARTY MAKING DECLARATION)



(SIGNATURE)